

REMARKS

Reconsideration of this application as amended is respectfully requested. Claims 1, 15 and 26 have been amended, and claims 3, 6-7, 9, 14 and 17-18 have been previously cancelled. Accordingly, claims 1, 2, 4, 5, 8, 10-13, 15, 16 and 19-34 remain in this application and are again presented for the Examiner's consideration in view of the following comments.

Initially, applicant's undersigned counsel wishes to thank Examiner Running and SPE Doan for the time and courtesies extended during the telephone interview conducted on November 28, 2007. The foregoing amendments and the comments which follow are intended to reflect the discussions held during that interview.

Claims 1, 2, 4, 5, 8, 10, 11 and 26-34 have been rejected as obvious under 35 U.S.C. § 103(a) over U.S. Patent No. 3,924,738 to Paupitch ("*Paupitch*") in view of U.S. Patent No. 5,191,975 to Pezzoli et al. ("*Pezzoli*"). Applicant respectfully traverses this rejection in view of the above amendments and for the reasons set forth below.

Applicant initially notes that claims 31 and 32 depend indirectly from claim 12, which has not been rejected over *Paupitch* in view of *Pezzoli*. Accordingly, applicant will treat this rejection of claims 31 and 32 as an inadvertent error on the part of the Examiner, and will presume that the Examiner intended to reject claims 31 and 32 as obvious over *Paupitch* in view of *Edwards* and *Pezzoli* as discussed more fully below.

As noted above, claims 1 and 26 have been amended to include the following requirement:

a connecting member having a first end connected to the first element opposite the first opening and having a second end connected to the second element opposite the second opening

Support for the foregoing amendment can be found in the drawings in Figs. 1 and 4A of the present application, and in paragraph [0045] which states that the connecting member (link element 29) is arranged between the first and second elements (loops 21 and 22) opposite the open ends 23 and 26.

Applicant submits that neither *Paupitch* nor *Pezzoli*, either alone or in combination, teaches or suggests the foregoing claim requirement. *Paupitch* is directed to a carrier in the form of a series of continuous interconnected rings used to hold and carry a plurality of cylindrical articles. According to *Paupitch*, the individual rings may be formed by incompletely slicing through a tube in alternating directions so that the individual rings will remain connected together at their points of contact. As acknowledged by the Examiner, *Paupitch* fails to teach first and second elements each including a pair of arms having free ends, the pair of arms being resiliently displaceable relative to one another.

In order to overcome this shortcoming of *Paupitch*, the Examiner has attempted to combine this reference with *Pezzoli*. Applicant submits that this combination of references is improper, and even if the references could somehow be combined, they still would not teach the subject matter of the present invention.

*Pezzoli* is directed to a packaging device in which the holding elements include a pair of arms having free ends, wherein the arms are resiliently displaceable relative to one another to securely engage first and second items. However, each of the embodiments of *Pezzoli* defines a rigid structure in which the holding elements are held in fixed relationship to one another. For example, referring to the embodiment of Fig. 1, the device includes two rows of holding elements, with each holding element in a row connected to an adjacent holding element by a vertical wall, and one row of holding elements

connected to the other row of holding elements by a web of material, namely, "interior support portion" 36 (column 4, lines 20-23). In view of this rigid connection, it is simply impossible for the holding elements of this embodiment to be placed in a folded configuration in which one holding element is coaxially aligned with another holding element. Because the device of *Paupitch* is formed from a resilient material while the device of *Pezzoli* is formed from a rigid material, and because the structures of these devices are vastly different from one another, applicant submits that one of ordinary skill in the art would lack a motivation to combine *Paupitch* with *Pezzoli*.

Rather than finding the motivation to combine the references in the prior art, the Examiner's rejection is a classic example of hindsight reconstruction in which the Examiner has selected teachings from multiple prior art references to create the subject matter claimed by applicant using the applicant's specification as a "template." *Texas Instruments, Inc. v. U.S. Int.'l Trade Comm'n*, 988 F.2d 1165, 26 USPQ 2d 1018 (Fed. Cir. 1993). The impropriety of such hindsight reconstruction is well settled. *Interconnect Planning Corp. v. Feil*, 744 F.2d 1132, 227 USPQ 523 (Fed. Cir. 1985); *In re Fine*, 837 F.2d 1071, 15 USPQ 2d 1596 (Fed. Cir. 1998). Although the recent Supreme Court decision in *KSR Int'l Co. v. Teleflex, Inc.*, 127 S Ct 1727 (2007), rejected a "rigid application" of the "teaching, suggestion or motivation" test for combining reference teachings, the decision reaffirms the principle that there still must be an apparent reason to combine elements taught by plural references. No such reason is apparent here.

Moreover, even if the teachings of *Pezzoli* could somehow be combined with those of *Paupitch*, applicant submits that such combination would still not teach the subject matter of the present invention. Thus, as stated by Examiner Running

and SPE Doan during the aforementioned telephone interview, any combination of *Pezzoli* with *Paupitch* would require the use of a tube having an open channel along one side thereof. After such structure is sliced in alternating directions as taught by *Paupitch*, the resulting structure would consist of open C-shaped elements joined together by adjacent arms with all of the openings facing in the same direction. The combination of *Paupitch* and *Pezzoli* would not teach a connecting member having a first end connected to the first element opposite the first opening and having a second end connected to the second element opposite the second opening as required by claims 1 and 26. In view of the foregoing, applicant submits that claims 1 and 26 patentably distinguish over the combination of *Paupitch* and *Pezzoli* such as to warrant their immediate allowance, which action is respectfully requested.

Claims 2, 4, 5, 8, 10, 11, 27-30, 33 and 34 depend either directly or indirectly from claims 1 or 26. At least for this reason, applicant submits that claims 2, 4, 5, 8, 10, 11, 27-30, 33 and 34 patentably distinguish over *Paupitch* and *Pezzoli*, and any combination which the Examiner claims can be made therefrom.

Claims 12, 13, 15, 16 and 19-25 have been rejected under 35 U.S.C. § 103(a) as being obvious over *Paupitch* in view of U.S. Patent No. 2,949,204 to ("*Edwards*") and *Pezzoli*. As noted above, applicant will also consider claims 31 and 32 as rejected under 35 U.S.C. § 103(a) over the same combination of references. Applicant respectfully traverses this rejection for the reasons set forth below.

Applicant initially reiterates the contentions set forth above with regard to the clear deficiencies of *Paupitch* and *Pezzoli*, and their attempted combination. The Examiner's attempt to combine these references with *Edwards* is improper.

Applicant notes the requirement in independent claim 12 that the connecting member be

foldable in a first direction so that the first surface of the first element confronts the first surface of the second element, and [be] foldable in a second direction so that the second surface of the first element confronts the second surface of the second element

While acknowledging that *Paupitch* fails to teach a connecting member which is foldable as claimed (and clearly *Pezzoli* fails to teach such connecting member since the structures of *Pezzoli* are rigid, and not foldable), the Examiner cited *Edwards* as providing this missing teaching. However, in each of the embodiments of *Edwards*, the elements are separated from one another by a connecting member in the form of an elongated strip of material. Because this structure is so vastly different from that of *Paupitch*, applicant submits that the teachings of *Edwards* and *Paupitch* simply cannot be combined. As noted previously, *Paupitch* requires the individual rings to be formed by slicing a tube in alternating directions. As a result, each of the rings is directly connected to an adjacent ring such that the rings cannot be spaced apart from one another. Such structures are the antithesis of *Edwards* in which the rings are spaced apart by the intervening strip of material. Because the structures of *Paupitch* and *Edwards* are so vastly different from one another, applicant does not understand how the teachings of these references possibly could be combined. Plainly, *Pezzoli* is of no help in overcoming the deficiencies of *Paupitch* and *Edwards*.

In view of the foregoing, applicant submits that claim 12 patentably distinguishes over the combination of *Paupitch*, *Edwards*, and *Pezzoli* such as to warrant its immediate allowance. Moreover, claims 13, 15, 16, 19-25, 31 and 32 depend either

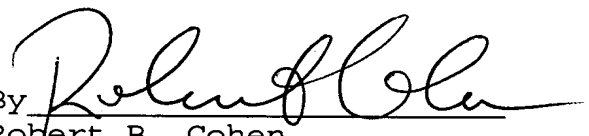
directly or indirectly from claim 12. Applicant submits that for at least this reason, these dependent claims patentably distinguish over *Paupitch*, *Edwards* and *Pezzoli*, and any combination which the Examiner claims can be made therefrom.

As it is believed that all of the rejections set forth in the Official Action have been fully met, favorable reconsideration and allowance are earnestly solicited. If, however, for any reason the Examiner does not believe that such action can be taken at this time, it is respectfully requested that she telephone applicant's attorney at (908) 654-5000 in order to overcome any additional objections which he might have.

If there are any additional charges in connection with this requested amendment, the Examiner is authorized to charge Deposit Account No. 12-1095 therefor.

Dated: December 10, 2007

Respectfully submitted,

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